

ORIGINAL

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>Middle</u>
Name <u>Anthony MAYO</u>	Prisoner No. <u>EP 0016</u>	Case No. <u>00-CR-00336-2</u>
Place of Confinement <u>State Correctional Institution of Retreat J. Rambo</u> <u>1600 State Route 11</u> <u>Huntlock Creek Pa. 18621-3136</u>		
Name of Petitioner (include name under which convicted) <u>Anthony Mayo</u>		Name of Respondent (authorized person having custody of petitioner) <u>v. United States of America</u>
The Attorney General of the State of:		

## PETITION

- Name and location of court which entered the judgment of conviction under attack Middle District of PA.  
Federal Building 228 Walnut St. Harrisburg Pa. 17108
- Date of judgment of conviction Oct. 11, 2001
- Length of sentence 276 mo.
- Nature of offense involved (all counts) Possession of firearms, conspiracy to commit that  
offense, carrying or using firearms during and in relation to drug  
trafficking crimes, conspiracy to commit that offense
- What was your plea? (Check one)
  - (a) Not guilty ☐
  - (b) Guilty ☒
  - (c) Nolo contendere ☐
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:  
Guilty Plea to one count possession of firearms
- If you pleaded not guilty, what kind of trial did you have? (Check one)
  - (a) Jury ☐
  - (b) Judge only ☒
- Did you testify at the trial?  
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?  
Yes ☒ No ☐

FILED  
HARRISBURG, PA

APR 20 2005

MARY E. D'ANDREA, CLERK  
Per [Signature]  
Deputy Clerk

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## 9. If you did appeal, answer the following:

- (a) Name of court United States Court of Appeals for the Third Circuit
- (b) Result Affirmed
- (c) Date of result and citation, if known February 14, 2003
- (d) Grounds raised Criminal History Category, upward departure, PSL report, enhancement

## (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

## (f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court United States Supreme Court
- (2) Result returned (3) times
- (3) Date of result and citation, if known Feb 18, 04 Mar 29, 04 April 14, 04 returned all 3 times
- (4) Grounds raised Insufficient ass. of counsel, Plea agreement notwithstanding - standing viol. of 6<sup>th</sup> and 5<sup>th</sup> amend.

## 10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

## 11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court District Court Middle District of Pa. Harrisburg Pa. 17108
- (2) Nature of proceeding for counsel to file 2255
- (3) Grounds raised Petitioner lack of knowledge of law State law lib. not equipped with up to date federal law

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(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒

(5) Result Denied

(6) Date of result Nov 30 2004

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding the consequences of plea

Supporting FACTS (state briefly without citing cases or law): When I pled to 1 count of poss. of firearms I didn't know Judge would enhance sentence on use of firearm record. I thought poss. of firearm meant poss. of firearm (not in a crime) just poss.

B. Ground two: Denial of effective assistance of counsel

Supporting FACTS (state briefly without citing cases or law): Counsel did not return calls for 7mo after signing plea. I had questions about P.S.R. about plea agreement. I did not see counsel again until day of sentence.

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C. Ground three: Sentence illegal, and unconstitutional violation  
Petitioner's constitutional rights

Supporting FACTS (state briefly without citing cases or law): Judge used Juvenile  
record and Adult record to set a greater criminal point  
score and enhanced sentence without jury trial

D. Ground four

Supporting FACTS (state briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal (state briefly what grounds were not so presented, and give your reasons for not presenting them: Denial of effective  
assistance of counsel) I asked Mr. Dohmann to file this on  
Mr. Pyfer. He stated I should file it another time.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing John F. Pyfer Jr.  
128 North Lime St. Lancaster Pa. 17608-1597

(b) At arraignment and plea John F. Pyfer Jr.  
128 North Lime St. Lancaster Pa. 17608-1597

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(c) At trial \_\_\_\_\_

(d) At sentencing John F. Pyler Jr.128 North Lime St. Lancaster Pa. 17608-1597(e) On appeal Jeffrey C. Dohemard161 West Third St. Williamsport Pa. 17703-0215

(f) In any post-conviction proceeding \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☐(a) If so, give name and location of court which imposed sentence to be served in the future: NOI'm serving Parole violation 100 mo.(b) Give date and length of the above sentence: 100 mo. Act. 2006 SEE Paroleboard

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

4/17/05  
(date)Anthony M. [Signature]  
Signature of Petitioner

**THE COURT ERRED SENTENCING THE PETITIONER TO A GREATER TERM  
OF INCARCERATION ON THE ENHANCEMENT OF THE PETITIONER'S PAST  
CRIMINAL RECORD ( S ) , JUVINILE RECORD AND MANDATORY SENTENCING  
VIOLATING THE PETITIONER'S UNITED STATES CONSTITUTIONAL RIGHTS**

The Petitioner was convicted of one ( 1 ) count Possession of a Firearm by Convicted Felon ; 18 U.S.C. 922 , ( g ) , ( 1 ). Petitioner was sentenced by this Court to a term of two hundred seventy - six ( 276 ) months ; incarceration . Petitioner is argueing that the sentence is an illegal sentence and unconstitutional . Petitioner avers , that the legality of sentence is never waived . The Court is also aware that the Petitioner , maybe over the one ( 1 ) year statue of limitations after sentence has been imposed . See : Federal Rules of Criminal Procedure Rule 35 ( b ) , ( 1 ) , ( B ) ; ( 2 ) , ( A ) and ( M B ). The Court may entertain the Petitioner's legality of sentence under the provisions of the statues in Rule 35 supra. The United States Supreme Court has found that the United States Courts have used an enhancement of sentencing defendants under past criminal record( s ) , juvinile record( s ) and prior bad acts as an unconstitutional violation of rights . See : Shepard V. United States , 2005 U.S. Lexis 2205 ( March 7th , 2005 ). Shepard entered a guilty plea to burglary in violation of the laws of the Commonwealth of Massachusetts. Subsequently , he plead guilty to a violation of 18 U.S.C. 922 ( g ) , ( 1 ) ( felon in possession of a firearm ). At sentencing the issue was whether the district court judge could use police reports , or other complaint documents to determine whether the guilty plea to burglary supported a conviction for generic burglary of a structure . The district court held that it could not use the police reports and other documents . The First Circuit disagreed with the district Court . The United States Supreme Court reversed , holding that , in the case of a guilty plea , the determination of the character of the burglary had to be based on the **statutory definition** , the charging document , the written plea agreement , the transcript of the plea colloquy , or admissions of the defendant . Four Justices ruled that " **any fact other than prior conviction used to increase the sentence must be found by a jury or admitted by the defendant** " thus further eroding

Almendarez-Torres V. United States , 523 U.S. 224 , 140 L.Ed. 2d. 350 , 118 S.Ct. 1219 ( 1998 ) . This Court on the record had sentenced the Petitioner to an increased sentence using the Petitioner's prior convictions and juvenile records and if this Court reviewed the record at sentencing it would notice that these documents were brought up at the sentencing and that this Court erred in the determination of the sentence of two hundred seventy - six ( 276 ) months on the basis of the Petitioner's prior records . In the case of Blakely V. Washington , 542 U.S. , 124 S.Ct. 159 L.Ed. 2d. 403 ( 2004 ) . held the sixth ( 6th ) Amendment of the United States Constitution prohibits imposition of a sentence above the legally prescribed maximum based on a fact or facts neither admitted by the defendant nor found by a jury beyond a reasonable doubt . The legally prescribed maximum means the " maximum sentence the judge may impose solely on the basis of facts reflected in the jury's verdict or admitted by the defendant" Blakely , 124 S.Ct. at 2537 . Also see : United States V . Booker , 543 U.S. , 125 S.Ct. 738 , 160 L.Ed. 2d. 621 ( 2005 ) . held that Blakely supra, applies to the Federal Sentencing guidelines and further held that the federal sentencing guidelines would be viewed as **advisory** and not **mandatory** , and that appellate review of federal sentences would be for reasonableness . Petitioner is under a illegal sentence that was imposed by this Court , which has been governed by the United States Supreme Court and by the United States Constitution . This Court had sentenced the Petitioner to a maximum term of two hundred seventy - six ( 276 ) months due to Petitioner's prior criminal history , even as a juvenile to enhance the sentence . See : **Sentencing Transcripts**. The Court is **WARRANTED** to review the sentencing transcripts and to **VACATE** the Petitioner's sentence and to **RESENTENCE** Petitioner under the provisions of the federal guidelines as stated in the statute federal guidelines in accordance with the charge of possession of a firearm by a convicted felon , 18 U.S.C. 922 , ( g ) ( 1 ) without the enhancement and the use of the Petitioner's prior records .

Name Anthony M. Yon  
Number CB 8876  
680 State Route 11  
Hubert Creek, PA 18621  
INMATE MAIL PA  
DEPT. OF CORRECTIONS

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